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REPORT OF THE PLANNING GROUP

Programme, procedures and working methods of the Commission and its documentation

1. At its 2378th meeting, on 2 May 1995, the Commission noted that, in paragraph 8 of resolution 49/51, the General Assembly had requested it:

> "(a) To consider thoroughly:
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> (i) The planning of its activities and programme for the term of office of its members, bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics;
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> (ii) Its methods of work in all their aspects, bearing in mind that the staggering of the consideration of some topics might contribute, inter alia, to a more effective consideration of its report in the Sixth Committee.
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> (b) To continue to pay special attention to indicating in its annual report, for each topic, those specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest for the continuation of its work."

2. The Commission agreed that this request should be taken up under item 8 of its agenda, entitled "Programme, procedures and working methods of the Commission and its documentation", and that this agenda item should be considered in the Planning Group of the Enlarged Bureau.

3. The Planning Group held four meetings. It had before it the section of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its forty-ninth session, entitled "Other decisions and conclusions of the Commission" (A/CN.4/464/Add.2, paras. 90-98). Mr. Hans Corell, Under-Secretary-General, The Legal Counsel, addressed the Planning Group at its first meeting.

Planning of the activities for the remainder of the quinquennium

4. The current programme of work consists of the following topics: State responsibility; draft Code of Crimes against the Peace and Security of Mankind; International liability for injurious consequences arising out of acts not prohibited by international law; The law and practice relating to reservations to treaties; and State succession and its impact on the nationality of natural and legal persons.

5. In accordance with paragraph 8 (a) (i) of General Assembly resolution 49/51, the Planning Group considered the planning of the Commission's activities for the last year of the current term of office, bearing in mind, as requested by the resolution, the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics.

6. The Planning Group recognizes that it is impossible to adopt a rigid schedule, but recommends that the Commission should set goals in planning its activities.

7. Taking into account the progress of the work achieved on the topics in the current programme, as well as the possibilities of making further progress, and bearing in mind the different degrees of complexity of the various topics, the Planning Group recommends that priority should be attached at the next session, particularly in the Drafting Committee, to the draft Code of Crimes against the Peace and Security of Mankind and to the draft articles on State responsibility, the goal being to complete, by the end of the current term of office, the second reading of the draft articles on the first of those topics and the first reading of the draft articles on the second of those topics. Since the second reading of the draft Code is already at quite an advanced stage, the Planning Group is of the view that most of the time should be set aside at the next session for the topic of State responsibility. It recommends, in particular, that a maximum of time should be allocated in the Drafting Committee to considering the draft articles on State responsibility that are pending before it. With reference to the topic entitled "International liability for injurious consequences arising out of acts not prohibited by international law", the Planning Group recommends that the Commission should make every effort to complete by 1996 the first reading of the draft articles on activities that risk causing transboundary harm. As regards the topic "State succession and its impact on the nationality of natural and legal persons", the Planning Group is of the view that the Working Group established at the present session should be reconvened at the next session for the purpose of continuing its work; the Commission would then be in a position to submit to the General Assembly various options as to the form which

the outcome of its work on the topic should take, thereby responding to the request contained in paragraph 6 of Assembly resolution 49/51. The schedule of work would be established in the light of the General Assembly's reaction. As to the topic of "The law and practice relating to reservations to treaties", the Planning Group, like the Special Rapporteur, considers that the Commission's work could cover a period of five years as from 1995 and lead to a guide to practice, containing, where necessary, model clauses, rather than to a set of draft articles. It recommends that, on this topic and the topic of "State succession and its impact on the nationality of natural and legal persons", the Commission should make all possible progress at its next session.

8. The Planning Group is of the view that, in order to meet the goals it has set for itself as described in paragraph 7 above, the Commission should, as an exceptional arrangement, allow for at least three weeks of concentrated work in the Drafting Committee at the beginning of the forty-eighth session.

Long-term programme of work of the Commission

9. Bearing in mind that some of the topics on its agenda had reached an advanced stage and that it was therefore time to give some thought to the programme of work for the next five-year term of office, the Commission re-established the long-term Working Group set up in 1993.

10. The Working Group, which was open-ended, was again chaired by Mr. Derek Bowett.

11. In the report which it submitted to the Planning Group, the Working Group stated that it had reviewed a number of topics 1/ and had reached the conclusions reflected below.

12. On the proposal of the Working Group, the Planning Group recommends to the Commission the topic of "Diplomatic protection". The Planning Group noted that work on this topic would complement the Commission's work on State responsibility and should be of interest to all Member States. It could cover the content and scope of the rule of exhaustion of local remedies, the rule of nationality of claims as applied to both natural and juristic persons, including its relation to so-called "functional" protection, and problems of stateless persons and dual nationals; and it could consider the effect of dispute settlement clauses on domestic remedies and on the exercise of diplomatic protection.

13. The Planning Group also noted the recommendation of the Working Group that work in the nature of a "feasibility study" should begin on a topic concerning the law of the environment. The Working Group had since 1993 considered sympathetically topics such as "Global commons" and "Rights and duties of States

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1/ Namely, the topics identified in 1993 (A/CN.4/453), plus the following three topics: diplomatic protection, shared (or transboundary) resources and international recognition.

for the protection of the environment", and the newly-suggested topic of "shared (or transboundary) resources" also had environmental implications. The Working Group believed some preliminary work

would be needed before the precise topic, and its content, could be determined, and for this reason, as regards this topic, the Working Group had recommended that more preparatory work should be undertaken.

14. In that light, and on the proposal of the Working Group, the Planning Group recommends that the Commission should insert the following paragraph in its report to the General Assembly:

> "The Commission notes significant progressive development of international law in the various sectors in the field of the environment since the 1972 Stockholm Declaration on the Human Environment. The sector by sector approach so far adopted in the conclusion of various treaties nevertheless involves the risk of losing sight of the need for an integrated approach to the prevention of continuing deterioration of the global environment. The Commission accordingly considers it appropriate to take up the subject of international global environmental law. However, as the subject is substantive, wide and complex, it desires to be authorized, as a first step, to conduct an extensive feasibility study of the topic entitled provisionally as 'Rights and duties of States for the protection of the environment', so that it would be in a position, after such a study, to recommend to the General Assembly the exact scope and content of the future topic. The feasibility study would encompass general principles, substantive and procedural rules, and measures for the implementation of obligations for the protection of the global environment. The Commission intends to focus more on the field of duties erga omnes where the real complainant of deterioration of the environment is the international community at large rather than individual States, and thus the study would include the topic of 'Global commons' as well. It would also cover the environmental aspect of the utilization of 'shared (or transboundary) resources'. The Commission would avoid duplication of the work being performed by it under the topic of 'International liability for injurious consequences arising out of acts not prohibited by international law'".

Working methods

15. At its last session, the Commission expressed the intention to review the conditions under which the commentaries are discussed and adopted, with a view to the possible formulation of guidelines on the matter. For lack of time, it was not able to discuss all aspects of the question. It agreed, however, that it was desirable for commentaries to draft articles to be taken up as soon as possible in the course of each session in order to receive the requisite degree of attention and, in any case, to be discussed separately rather than in the framework of the adoption of the Commission's report to the General Assembly.

16. At the present session the Planning Group took up the matter again.

17. With reference to the content of commentaries, the Planning Group wishes to draw attention to article 20 of the Commission's Statute, which reads as follows:

"Article 20

The Commission shall prepare its drafts in the form of articles and shall submit them to the General Assembly together with a commentary containing:

(a) Adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrines;

(b) Conclusions relevant to:

(i) The extent of agreement on each point in the practice of States and in doctrine;

(ii) Divergencies and disagreements which exist, as well as arguments invoked in favour of one or another solution."

18. The Planning Group is aware that the content and length of the commentaries accompanying draft articles depend partly on the nature of the topic and the extent of the "precedents and other relevant data, including treaties, judicial decisions and doctrine". It none the less recommends that the Commission should encourage the Special Rapporteurs to draft the briefest possible commentaries and to include in them only elements which will make the text of the articles easier to understand and apply. It emphasizes in this connection that commentaries perform a function different from that of the reports by the Special Rapporteurs and that the reports are easily accessible, since they are reproduced in the Commission's Yearbook.

19. The Planning Group also considers it desirable for the commentaries to the various draft articles by the Commission to be as uniform as possible in presentation and length. It recommends that the Commission's Rapporteurs should pay due attention to this matter.